

M e m o r a n d u m

To: Ms. Lisa Thompson, MIC: 64
Supervising Property Appraiser

Date: December 13, 2002

From: Mary Ann Alonzo
Senior Tax Counsel

Subject: *Acceptable Language of Dedication and Dissolution Clauses*

This is in response to your request of December 10, 2002, for our legal opinion concerning whether a “public” or “public benefit” purpose stated in the dedication and dissolution clauses of the articles of incorporation of nonprofit organizations would satisfy the legal requirements for the welfare exemption. You inquire, specifically, whether the dedication and dissolution clauses would be acceptable if they include the phrase, “charitable or public benefit purposes meeting the requirements for exemption provided by section 214 of the Revenue and Taxation Code.” As discussed below, a public or a public benefit purpose would not satisfy the statutory requirements for these clauses.

LAW AND ANALYSIS

1. A statement of “public” or “public benefit” purpose in the dedication and dissolution clauses is disqualifying for purposes of the welfare exemption.

As you are aware, nonprofit organizations are required to submit their articles of incorporation or other governing document to the board, when filing an initial claim for the welfare exemption.¹ Section 214, subd.(a) of the Revenue and Taxation Code² provides in relevant part, that property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation if:

* * *

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific or charitable purposes... .

¹ Or in the case of other nonprofit organizations such as noncorporate funds, foundations or corporations chartered by an act of Congress, compliance with this requirement is met by providing such language in their governing documents (bylaws, articles of association, constitution or regulations).

² All section references are to the Revenue and Taxation Code, unless otherwise indicated.

As to when property is “irrevocably dedicated” to such a purpose or purposes, section 214.01 provides that, “[f]or the purpose of section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the nonprofit corporation.”

For purposes of this analysis, the following is an example of dedication and dissolution clauses that dedicates a nonprofit corporation’s assets to charitable and public purposes, and authorizes distribution of the corporation’s assets to an organization organized and operated for charitable and public purposes.

The property of this corporation is irrevocably dedicated to charitable and public purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the corporation, its assets remaining after payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation, which is organized and operated exclusively for charitable and public purposes and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code.

As indicated, section 214.01 states that for the purpose of section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific or hospital purposes only if a statement of irrevocable dedication to only those purposes is found in the articles of incorporation of the corporation. The intent of section 214.01 was to substitute a specific requirement for the rather subjective test of “construing the articles of incorporation as a whole to imply dedication” of a corporation’s property. (Stats. 1966, ch. 147 (First Extra Session), in effect October 6, 1966).) Since the enactment of section 214.01 in 1966, the Board and Board staff have construed, “only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation” literally.³ (Assessors’ Handbook, AH 267, Welfare, Church and Religious Exemptions April 2002, Appendix C)

Accordingly, a statement of irrevocable dedication to charitable and public purposes is beyond the scope of section 214.01. The corporation would have to amend its articles to delete the reference to public purposes. Similarly, the scope of a dissolution clause that authorizes distribution of the corporation’s assets to charitable and public purposes is too broad since section 214, subd. (a)(6) contemplates distributions only to organizations organized and operated for religious, hospital, scientific, or charitable purposes and

³ The sole exception has been irrevocable dedication to charitable and educational purposes meeting the requirements for exemption provided by section 214, as explained in the Board’s Assessor’s Handbook, Section 267, Welfare, Church and Religious Exemptions. (Chapter 1 and Appendix C.)

amendment to delete the reference to public purposes would be necessary. The informational materials provided to nonprofit organizations should advise that upon amendment of the articles, it is necessary to file the amended articles with the Secretary of State's office, and forward a certified copy thereof to the Board's Exemptions Unit, in order for its property to be eligible for the welfare exemption.

2. The following language in the dedication and dissolution clauses does not meet the statutory requirements: *"the property is irrevocably dedicated to charitable [and, or] public benefit purposes meeting the requirements for exemption provided by section 214, ... and upon dissolution the property will be distributed to a nonprofit organization, which is organized and operated exclusively for charitable [and, or] public purposes ."*

Your proposed language is based on the language, which the Handbook advises is an acceptable or qualifying statement of irrevocable dedication to "charitable and educational purposes." This is the sole exception to the requirement in section 214.01 of a statement of irrevocable dedication to only one or more of the four stated purposes (religious, hospital, scientific, or charitable). In recognition that some educational purposes are charitable purposes, the use of educational purposes together with charitable purposes in a statement of irrevocable dedication has been deemed to meet the requirements of sections 214, subd. (a)(6) and 214.01, if followed by qualifying language as follows: "...charitable and educational purposes meeting the requirements for exemption provided by section 214 of the Revenue and Taxation Code." (Assessors' Handbook, AH 267, Welfare, Church and Religious Exemptions, Ch.1, Appendix C; Property Tax Annotation 880.0280 C 3/22/77, attached.)

The Legislature has defined the kinds of educational activities that can qualify under the charitable purposes aspect of the Constitution and section 214 through its enactment of section 214, subd. (j). However, there are no statutory criteria or requirements that could be used to determine when "public benefit" purposes are also qualifying charitable purposes. Public benefit is a term used in the California Corporations Code to describe one of three major types of nonprofit corporations. Pursuant to the Nonprofit Public Benefit Corporation law (Corp. Code, §§5110-6910), public benefit corporations may be formed for public or charitable purposes; they are not operated for the mutual benefit of their members, but for some broader good. (Corp. Code, § 5110.) Public benefit corporations may include traditional "charitable" corporations; however, "a public benefit" purpose is much broader than a charitable purpose. Thus, only some public benefit purposes may be charitable purposes.

Accordingly, a statement of irrevocable dedication to "charitable or public benefit purposes meeting the requirements for exemption provided by section 214" would not be acceptable. The use of the word, "or" would allow either a charitable purpose or a non-

qualifying public benefit purpose, that is not charitable to qualify. Similarly, language that states "charitable **and** public benefit purposes meeting the requirements for exemption provided by section 214," would not be acceptable. While the intent of the proposed language, presumably, would be to limit the exemption to public benefit purposes that are also charitable purposes, the likely result would be an expansion of the exemption to include nonqualifying public benefit purposes. Accordingly, a statement of irrevocable dedication to "charitable and public benefit purposes meeting the requirements for exemption provided by section 214," is nonqualifying.

As noted above, a dissolution clause authorizing the corporation's assets to be distributed to a nonprofit organization organized and operated for "charitable and public purposes meeting the requirements for exemption provided by section 214," would not be acceptable. The scope of this language is much broader than the provisions of section 214, subd. (a)(6), which contemplates distributions only to organizations organized and operated for religious, hospital, scientific, or charitable purposes. Claimants with statements of irrevocable dedication and dissolution indicating both charitable and public benefit purposes, are required to amend the provision to delete the latter purpose. The following statement would be acceptable:

The property of this public benefit corporation is irrevocably dedicated to charitable purposes and no part of the net income or assets of this corporation shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Upon the dissolution or winding up of the corporation, its assets remaining after payment, of all debts and liabilities of this corporation shall be distributed to a nonprofit fund, foundation or corporation, which is organized and operated exclusively for charitable purposes and which has established its tax exempt status under section 501(c)(3) of the Internal Revenue Code.

This language would satisfy the statutory requirements, that the property of nonprofit corporations be irrevocably dedicated only to religious, hospital, scientific, or charitable purposes (sections 214, subd. (a)(6); 214.01), and the dissolution clause requirement, that, upon dissolution of the organization, its property would transfer to a qualified organization, organized for such purposes. (section 214, subd. (a)(6).)

3. Distribution of an organization's property to a government entity is acceptable.

As you have noted, the nonprofit organization has the option of distributing its property upon dissolution to another qualified organization or to a government entity. You ask whether it can be any government entity or does it have to be one that will use the assets for a charitable purpose. The property may be distributed to any government entity since such property is exempt, per the Constitution, solely on the basis of ownership by the government. (Art. XIII, §§ 3(a) and 3(b).)⁴ Thus, a requirement that property be used for

⁴ Exceptions to the general rule that property owned by government entities is exempt from property taxes include property owned by a local government entity that is located outside its boundaries and property in California owned by another state.

Ms. Lisa Thompson
December 13, 2002
Page 5

an exempt purpose does not apply to government entities. It has been our view, that upon a nonprofit organization's dissolution, its assets may issue to a government entity because there would still be compliance with the second requirement of section 214, subd. (a)(6), that the organization's property not inure to the benefit of any private person. In that regard, see attached Property Tax Annotation 880.0080 C 10/25/82.

I trust that this information serves to clarify your understanding of statutory requirements governing dedication and dissolution clauses. You may contact me at 324-1392 if you have further questions.

MAA:tr
prop/prec/welexqal/maa/02/33maa

Attachments [Annotations 880.0080 (C 10/25/82), 880.0280 (C 3/22/77)]

cc: Mr. David Gau, MIC: 63
Mr. Dean Kinnee, MIC: 64
Mr. Gordon Ferguson, MIC: 64
Ms. Colleen Dottarar, MIC: 64